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Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Submission in CC Docket No. 96-98

Dear Ms. Salas:

WorldCom, Inc. submits this letter to comment on *ex parte* filings recently submitted by a number of parties in this proceeding. Based on its actual market experience as the largest facilities-based competitive local exchange carrier (CLEC), WorldCom challenges the claims made by several incumbent local exchange carriers (ILECs) that requesting carriers would not be impaired in their ability to offer telecommunications services if the exception to the requirement that ILECs make unbundled switching available were expanded. WorldCom also shows that its market experience supports various claims made by requesting carriers concerning the switching exception.

1. U S West *ex parte* dated June 12, 2000

U S West claims:

> the Commission should not require ILECs to provide unbundled switching in areas where one or more competitive local exchange carriers (CLEC) have deployed their own switches capable of serving customers in that area. Because a CLEC switch located within a 50 mile radius of an ILEC switch is capable of serving the same customers as are served by the ILEC, it follows that a requesting carrier is not impaired if it does not have access to unbundled switching within that area.

and:

> the unbundled switching exception should not be limited to the top 50 MSAs ... because large numbers of CLECs have deployed switches in other MSA markets....

These claims are without merit for many reasons. As WorldCom explained in detail in its *ex parte submission of August 9, 1999,* **the fact that one CLEC has deployed a switch in a**

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geographic area does not demonstrate that it would be economically feasible for another CLEC to deploy a switch in that area nor that other CLECs would not be impaired in their ability to provide telecommunications services if denied access to the ILEC switch. CLEC business plans generally are premised on capturing no more than 10 percent market share and there are substantial diseconomies associated with operating a switch at low capacity. Thus the economics of switch deployment are based on some expectation that when the projected market share is attained traffic will be sufficient to operate the switch efficiently. Thus, for example, it is reasonable for a CLEC to expect to be able to attain 40,000 business lines in a market in order to be able to operate efficiently. Beyond the top 50 MSAs, the number of business lines fall below 200,000, so CLECs cannot expect to capture more than 20,000 lines.

In these second tier cities, one CLEC may have been able to enter the market because it has captured a single large customer (or a few large customers) that allows it to gain the requisite scale economies, but that does not make it viable for other CLECs to deploy switches. For example, it might be viable for WorldCom to deploy a local switch in a second tier market where it already has an on-going business relationship with a very large long distance customer whose local traffic it therefore believes it has a high probability of winning, but it would not be viable for WorldCom to deploy switches in other cities of identical size in which it did not already have such a customer relationship.

In those markets where WorldCom has not deployed a switch and fiber network, and therefore can only serve customers using another carrier's facilities, the limited facilities of a CLEC may not provide an effective substitute for the ILEC's ubiquitous facilities. Even if the CLEC is willing to make the facilities available, there is no guarantee that those facilities will enable a company like WorldCom to provide a consistent product to all locations within the ILEC's service area.

The mere deployment of a CLEC switch does not demonstrate that the switch can be used to serve all customers -- and WorldCom's actual experience is that we frequently cannot use our switches to economically serve significant sets of small business customers. As WorldCom explains in a companion *ex parte* filing also submitted today that presents information on the size, product requirements, and geographic characteristics of the local business customers it serves – and those it is not able to serve – in those geographic areas where it has deployed its own switch and fiber network, WorldCom tries to serve as many customers as possible using its switches and fiber network, but how many and which types of customers it can serve will depend on its ability to efficiently concentrate customer traffic and bring it to its fiber ring.

For example, WorldCom cannot simply bring an analog line to its fiber ring; the analog signal must be converted to digital, which requires WorldCom to collocate conversion equipment at the ILEC end offices serving the customer. **Thus, WorldCom is only able to use its own switches to provide analog line service to small business customers who are located in the geographic areas served by the ILEC end offices at which it is collocated – which are only a**

very small portion of ILEC end offices. By contrast, WorldCom can serve a more geographically dispersed group of customers seeking digital trunking or PRI ISDN services over leased T1 lines because the latter do not require collocated conversion equipment. But even for these digital services, high mileage charges for interoffice transport in ILEC access tariffs place very significant distance limitations on where WorldCom or other CLECs can compete. WorldCom can offer service only to customers in rate centers within 20-25 miles of its network – nowhere near the 50 mile radius cited by U S West that may be technically feasible, but isn't economically feasible.

U S West argues that "the unbundled switching exception should not be limited to density zone 1 areas." As WorldCom explains in greater detail in its companion *ex parte*, it might be possible to expand the exception in the top 50 MSAs beyond the density zone 1 areas if CLECs had unencumbered access to unbundled loop-transport combinations (often referred to as "EELs") that allowed them to efficiently concentrate customer traffic. But in the absence of unencumbered access to EELs, CLECs cannot provide economic analog service to small business customers who are not located in the geographic areas served by the ILEC end offices at which CLECs are collocated – which may well be geographic areas even smaller than the density zone 1 areas.

U S West is just plain wrong in alleging that "[t]here is no legal basis for the Commission to require ILECs to offer enhanced extend links ("EELs") as a condition for obtaining relief from the unbundled switching requirement in a particular market." The Commission has made the fully legal determination that CLECs would be impaired in their ability to offer telecommunications services without access to unbundled switching where they do not have access to EELs. Under the Commission's UNE remand order, ILECs are not required to offer EELs. They are simply required to offer unbundled switching in those situations where CLECs would be impaired in their ability to offer telecommunications services absent access to that switching. One such situation is where CLECs lack access to EELS.

2. SBC *ex parte* dated May 19, 2000

SBC argues that the Commission should revise the switching exception "to include all wire centers in the top 50 MSAs and in other MSAs in which there is significant competitive activity" and to eliminate the four-line cut-off in any state where "an ILEC can demonstrate that it provide unbundled loops through hot cuts in a manner that offers CLECs a meaningful opportunity to compete." SBC supports its arguments with data on the number of CLEC collocations in wire centers within MSAs, arguing that the number of collocations indicates the level of competition in the MSA.

The data and analysis provided by SBC do not support its arguments. Its raw data on the number of collocations do not, on their own, have policy implications. Many of the collocations belong to data CLECs who are only offering a narrow DSL product line. Specific claims – e.g., that 45 percent of SWBT and PacBell wire centers in the top 50 MSAs have 10 or more

collocation arrangements – are helpful in identifying the boundaries within those MSAs for the switching exception.[1] But these data do not support SBC's proposal that the exception include all serving wire centers in the top 50 MSAs. Nor do the data provide any support for expanding the exception beyond the top 50 MSAs.

SBC provides line data that undermine rather than support its arguments. It claims that "70% of SBC's business customers use three lines or fewer."[2] SBC's proposal to eliminate the four-line cutoff assumes that the only reason that CLECs cannot serve small business customers is the hot cut problem. In fact, as discussed in detail in the companion *ex parte*, to be able to compete, CLECs must be able to utilize unbundled ILEC loops and transport along with their own switching as efficiently as the ILECs do. Even if the hot cut problem is resolved, in the absence of unencumbered access to EELs, this will only be possible when serving customers located in calling areas served by ILEC end offices at which the CLECs are collocated – not throughout an MSA.

SBC argues that "the ability of CLECs to convert special access circuits carrying significant local traffic to the functional equivalent of the EEL" fully addresses the collocation problem. This might be the case if access to EELs truly was unencumbered, but that is not the case. Requesting carriers currently are denied conversion to EELs when those unbundled elements are "commingled" with a special access service -- thus denying requesting carriers access to the same scale economies that the ILEC enjoy from placing local and access traffic on the same facilities. Many exclusively local WorldCom circuits (some consisting only of loops, some of loop and transport) are brought to WorldCom collocations where they are concentrated using multiplexers purchased out of the ILEC access tariff. ILECs will not allow WorldCom to convert those circuits to UNEs. Similarly, ILECs refuse to allow WorldCom to convert its lines to EELs that would "commingle" with entrance facilities purchased out of the access tariff. Moreover, going forward, ILECs refuse to allow requesting carriers to simply purchase "new combination" EELs; they require requesting carriers to first purchase the circuits out of access tariffs and then convert to EELs (with potential term liabilities).

3. SBC *ex parte* dated June 13, 2000

SBC provided additional data on switching and collocation to support its proposal that the switching exception be extended to the top 100 MSAs and even beyond the top 100. These data

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[1] As indicated in the companion *ex parte*, WorldCom is able to provide analog line service to small business customers that are located in areas served by ILEC end offices at which WorldCom is collocated. Thus creating an exception boundary defined by serving wire centers in which multiple full-service CLECs are collocated would be a useful alternative to the current Density Zone 1 boundary.

[2] But SBC does not identify what percentage of total business lines the customers that use three lines or fewer represent.

have the same limitations as the earlier data. They do not indicate the type of switch or collocation – how many of these are the switches and collocations of data CLECs who are not providing any voice services? In fact, there is total silence on what classes of customers are being served – and are **not** being served – by the CLECs who have deployed these facilities. The data provide no market test of which services CLECs are able to offer customers.

SBC alleges that "[t]he claim that CLECs cannot use their own switches to serve DSO loops defies common sense and should be rejected on its face," but provides no evidence to support this rhetoric. As explained in the companion *ex parte*, CLEC networks can be used to offer DS-0 services in the narrow circumstance of the customer being served by the ILEC end office at which the CLEC is collocated, but cannot be used to provide such services in most geographic locations. SBC focuses only on the hot cut problem, which is but one contributing factor in any impairment analysis.

4. Bell Atlantic *ex parte* dated May 12, 2000

Bell Atlantic argues that the Commission should not require ILECs to unbundle local switching in areas served by competitors using their own local switching because that demonstrates their ability to provide services without the ILECs' switching UNE. Bell Atlantic makes no attempt to identify the types of customers served and the types of products provided by CLECs who use their own switches. As WorldCom explains in detail in the companion *ex parte*, even where we have switches there are large sets of small business customers seeking certain types of services that we cannot serve with our switches. The same is true for other CLECs.

Bell Atlantic cites the number of its rate centers outside the top 50 MSAs served by at least one competitor switch. But, as discussed above and in the companion *ex parte*, the mere existence of a CLEC switch neither demonstrates that other CLECs are not impaired without access to the ILEC switch nor demonstrates that there are alternatives available for small business customers in those locations.

Bell Atlantic also argues that the Commission should not require EELs as a prerequisite to relief from switch unbundling.[3] It bases this on the invalid argument that the reduction of collocation costs is irrelevant to the impairment test for the local switching UNE and the same incorrect legal argument presented by SBC that the Commission does not have the authority to require ILECs to combine elements that are not already combined in the network. All costs are relevant considerations in any impairment test. Bell Atlantic also argues that requiring EELs is not a sound policy because it will undermine the investment already made by competing carriers in their own networks. This is not a compelling argument. Competitive access providers (CAPs)

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[3] By contrast, as discussed above, SBC argues in its May 19, 2000 *ex parte* that "the ability of CLECs to convert special access circuits carrying significant local traffic to the functional equivalent of the EEL" is the basis for allowing the Commission to broaden the carve-out.

and CLECs have invested primarily in DS-3 and higher level transport facilities located in high traffic density routes where competitive pressures already have driven market rates down toward costs. Thus, the differential between UNE rates and access rates for entrance facilities that connect ILEC serving wire centers with IXC POPs tend to be quite small; conversion to UNE rates will have very little market impact. The great gain from conversion to EELs is in the interoffice transport routes primarily served by DS-1s, where the underlying economics has not justified much competitive entry and where as a result ILECs have maintained access rates far above the TELRIC UNE rates. But since competing carriers have made only limited investments in these DS-1s, and are unlikely to make substantial investments even if rates are maintained at above-cost access levels, the financial impact on them will be limited.

Bell Atlantic claims that the line cut-off must be justified on the basis of hot cut problems. As discussed above, there are many other reasons why a higher line cut-off is justified.

5. AT&T *ex parte* dated May 16, 2000

WorldCom's market experience confirms AT&T's explanation that there are many barriers that impair CLECs' ability to provide telecommunications services without access to ILEC switches beyond the hot cut problem – including the inability to efficiently aggregate traffic that adds costs to the CLECs' cost structure that ILECs do not face. AT&T also correctly states what we too know from experience: that "only a T1 aggregation strategy is generally feasible today." Thus, any customer line cut-off in the switching exception should be consistent with serving a customer with a T1 -- somewhere in the vicinity of 16 lines.

WorldCom from experience fully agrees with AT&T's discussion on how to implement the line counts in the exception. Line counts should consider only lines of a *single* customer at a *single* location purchased by a *single* carrier. AT&T is correct, of course that no CLEC can attain aggregation efficiencies from a single customer across multiple locations; nor are there aggregation efficiencies across multiple CLECs serving a single location.

6. Focal *ex parte* dated May 19, 2000

Focal's submission is based on its business plan, which is substantially different from WorldCom's, but reaches many of the same conclusion as WorldCom about a reasonable switching exception. Like WorldCom, Focal emphasizes the urgent need for access to EELs and to raise the number of customer lines to a DS-1 equivalent. Focal considers a broader geographic area than Density Zone 1 -- in the context of unencumbered access to EELs. It appears from Focal's brief submission that under its particular business plan it does not intend to offer services where it does not have its own network in place, and it therefore does not address a limit on the size of MSA to be included. But as WorldCom has discussed elsewhere, any provider seeking to provide national service must have access to UNE-switching/UNE-platform in those geographic markets where it does not deploy its network, and the economies of scale calculation suggests

that widespread CLEC switch deployment is not supportable beyond the top 50 MSAs.

7. PACE *ex parte* dated May 19, 2000

The PACE submission correctly identifies the manual migration problems that plague every CLEC. These provisioning problems as well as the underlying economics effectively limit the provision of services to small business customers to digital products using T1s. Even if the migration problems were solved, analog lines can only be offered if the customer is located in the area served by an ILEC end office at which the CLEC is collocated. PACE is correct that the best indicator of whether a customer is sufficiently large to be served by a high-capacity facility is whether the customer has already chosen such an access method.

Commission staff should feel free to contact me if it has any questions.

Sincerely,

Chuck Goldfarb

Chuck Goldfarb
Director, Law and Public Policy

cc. Jake Jennings
Katherine Farroba
Jonathan Reel
Christopher Libertelli